

**Findings and Recommendations Pursuant to California Government Code
3505.4 & 3505.5
PERB Case # LA-IM-205-M**

In the Matter of an Impasse Between

Housing Authority of the City of Los Angeles

And

Council of Housing Professionals

For the City:

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For the Union:

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Factfinding Panel:

Neutral Member

David A. Weinberg
Arbitration Mediation and Conflict Resolution

Housing Professionals Member

Nikita “Nik” Soukonnikov, Attorney

HACLA Member

Nate J. Kowalski, Attorney

PROCEDURAL BACKGROUND

On July 7, 2016 the Public Employment Relations Board (PERB) notified me that I was selected by the *Housing Authority of the City of Los Angeles and Council of Housing Professionals* to serve as the Neutral Chair of the factfinding Panel pursuant to the Meyers-Milias-Brown Act. The Neutral Chair convened a conference call with the parties' advocates on August 16, 2016 to discuss scheduling and other related matters. The Panel held a factfinding hearing on August 26, 2016 in the City of Los Angeles. At these hearings the parties presented testimony and evidence to the Panel. The parties stipulated that all the requirements of the MMBA have been complied with and this matter is properly before the Factfinding Panel.

RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act¹. The sections of the amendments that are pertinent to this proceeding are as follows:

3505.4. Unable to effect settlement within 30 days of appointment;
request for submission to factfinding panel; members; chairperson; powers;
criteria for findings and recommendations

(a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days

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after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public

agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

BACKGROUND AND RELEVANT FACTS AND FINDINGS

The Housing Authority of the City of Los Angeles (“HACLA”) is a state chartered public agency established in 1938. It is one of the largest public housing authorities in the nation with over a dozen different housing developments with thousands of housing units rented to City residents. HACLA’s funding comes largely (95%), from federal sources including HUD and other grants. Rent from HACLA public housing residents is also collected as part of the funding sources.

HACLA has five different bargaining units that represent various groups of employees. Council of Housing Professionals (“CHP-A”) represents 104 current employees (with 4 vacancies), in 20 classifications. These include Accounting Supervisors, Assistant Housing Managers, Construction Project Managers, Ombudsperson, Security Supervisors, and other largely professional occupations. This is the bargaining unit that is the subject of this factfinding.

In addition to CHP-A, HACLA has four other bargaining units. CHP-M (managers), a unit of 32 employees who at one time were part of CHP-A. SEIU 721, representing 12 employees, Los Angeles County Building Trades, representing 143 employees, and AFSCME, which represents 353 employees. At this time only CHP-A and AFSCME are without a current agreement.

The parties were signatories to a MOU for the period of October 1, 2013 through September 30, 2014. In July 2014 the parties began bargaining for a successor agreement. The parties exchanged numerous formal and informal offers during the course of negotiations leading up to the declaration of impasse on June 7, 2016 by HACLA. CHP-A presented its last written proposal on March 31, 2016 and HACLA presented its LBFO on June 1, 2016. On June 6, 2016 CHP-A notified HACLA that its members had rejected HACLA’s LBFO. The parties during the Factfinding agreed that there were four (4) outstanding issues before this Panel: 1) Term; 2) Compensation; 3) Sick and Vacation; and 4) Medical Benefits. The parties stipulated that the Factfinding

Panel needs only to consider internal comparability and **not** external comparability in making their determinations.

The other bargaining units that are under newly negotiated agreements have received a variety of wage increases, which differ some due to different expiration dates and other differences in the terms of their MOU. CHP-M has negotiated a 2% wage increase on March 1, 2016, and a 2.25% increase on January 1, 2017 with an expiration date of 12/31/2017. CHP-M has also received an additional Step 8, while changing the intervals for all Steps to 3% from the existing 5%. SEIU has negotiated a 2% increase following the 1st month of ratification, and a 2.25% increase one year after ratification, with an expiration date of 6/30/2017. They also will pick up 1% of the EPMC on 7/1/16. The Trades have negotiated a 2.25% increase on October 1, 2015 and a 2.25% increase on July 1, 2016, with an expiration date of 6/30/2017. None of the bargaining units under contract received a retroactive COLA increase. The CPI-U for Los Angeles County has increased approximately 6% since the parties MOU expired on September 30, 2014.

The other bargaining units each have differences in the area of sick and vacation leave. CHP-M and the Trades have general leave, and CHP-A and SEIU have separate sick and vacation leave. There are also several accrual tiers in each of the agreements with respect to employment date. I have not made a detailed factual record of these differences in these findings due to the parties agreement to recommend the Neutral Factfinder Recommendation.

HACLA has proposed for all the units still in bargaining, or has already reached agreements with the other bargaining units to eliminate its former cafeteria medical plan. In its place HACLA will pay (and proposing to pay) 100% (of Kaiser) for employees medical, dental, and vision insurance coverage effective Dec 1, 2016. Some of the other units who had reached an earlier MOU saw an increase in the medical subsidy until the new system kicks in. The opt-out payments for existing and grandfathered employees are similar with all the units.

RECOMMENDATIONS

The Neutral Factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The statute lays out a set of criteria that is to guide the Panel in making their findings, and as noted earlier the parties stipulated that internal, and not external comparability should be the criteria for making comparability determinations. I have used all of the relevant MMBA criteria to make this recommendation. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. Through the course of the factfinding conducted on August 26, 2016 we worked to narrow the differences, and at the end of the Factfinding the parties both agreed to recommend to their members and Boards, the Recommendation of the Neutral Factfinder. I recommend the following terms for all the agreed upon outstanding issues, with the understanding that the parties had already reached numerous TA's on other items not under consideration in this hearing, and all items not referenced below are agreed upon based on HACLA's LBFO dated 6/1/16.²

Issue #1 Term: Adoption of HACLA LBFO

The differences between the parties was not significant on this issue, and combined with the wage recommendation is most consistent with the criteria in the statute in that it creates the most comparability with the other units and takes into account the welfare of the public and good labor relations between the parties to have a longer term.

Issue #2 Wages: 3% COLA increase effective on the first of the month following the date this MOU is adopted by the Board of Commissioners.

3% COLA on January 1, 2017

No Retroactivity

I recommend this settlement in that these increases will most reflect a comparable settlement to the other units when you take into account that due to the lack of an agreement until this date, the unit will effectively have had a wage freeze for the

² This LBFO is attached as an appendix to this Findings and Recommendations.

last two years, since the expiration of the prior MOU. When this is factored in to the increases going forward the settlement is consistent with the other units and other factors including the inflation index. The adoption of no retroactivity reflects the labor relations practiced by the parties historically, which provides an incentive to reach agreements in a timely fashion.

Issue #3 Sick and Vacation: Adopt HACLA LBFO, except that the top rate of vacation accrual for existing employees will be changed to employees hired prior to 12/1/08. (From 12/1/06)

The adoption of HACLA's LBFO is most consistent with the other units under contract and the other MMBA factors cited. The change in the hire date represents a fair compromise between the parties to maintain good labor relations and mitigates the loss of vacation time for the most senior employees who have or would soon receive the higher benefit. It allows over time for the employer to reduce this cost, as less senior and newer employees will receive a lower rate of accrual.

Issue #4 Medical Benefits: Adopt HACLA LBFO

The adoption of HACLA's LBFO maintains the standard of medical benefits provided to all the other units under contract going forward, and currently proposed for the other unit not under contract. This is most consistent with the criteria set in MMBA and it generally makes sense for employers to maintain similar medical programs for cost effectiveness and efficiency of administration and care.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated September 1, 2016 David A. Weinberg

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with the recommendations _____

I dissent from the recommendations _____

HACLA Panel Member:

I concur with the recommendations _____

I dissent from the recommendations _____

CHP-A Panel Member:

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated September 1, 2016 Dasu

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with the recommendations DAW

I dissent from the recommendations _____

HACLA Panel Member:

Nate Kowalski

I concur with the recommendations _____

I dissent from the recommendations _____

CHP-A Panel Member:

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated September 1, 2016 David A. Weinberg

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with the recommendations _____

I dissent from the recommendations _____

HACLA Panel Member:

I concur with the recommendations Nikita Soukonnikov

I dissent from the recommendations _____

CHP-A Panel Member:

[Signature]